IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 991 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SULEMANBHAI IBRAHIMBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 991 of 2001

MR NEHAL R JOSHI for Petitioner

MR SAMIR DAVE, APP for Respondent No. 1

MISS THAKKAR WITH MR YOGESH S LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/03/2002

ORAL JUDGEMENT

Heard Mr.Nehal R. Joshi, learned advocate for the petitioner, Mr.Samir Dave, learned APP for the

respondent No.1-State and Miss Thakkar with Mr.Yogesh Lakhani, learned advocates for the respondent No.2.

This petition has been filed by the petitioner-husband against the maintainance amount awarded by learned Judicial Magistrate (First Class), Viramgam in Misc. Cri. Application No.189 of 1992. As the maintainance amount awarded by the learned Magistrate was not deposited by the present petitioner, Misc. Cri. Application Nos.221 of 1999 and 265 of 1999 were preferred by the respondents for recovery of maintainance amount. After hearing the learned advocates appearing for the respective parties, learned Magistrate vide order dated 31-3-2001 has ordered the present petitioner-husband to undergo imprisonment of 465 days for not paying the arrears of maintanance. Hence, present petitioner preferred Criminal Revision Application No.66 of 2001 before the District and Sessions Judge, Ahmedabad (Rural). However, same was rejected by the learned Sessions Judge vide order dated 29-10-2001 whereby he has confirmed the order passed by the learned Magistrate against which, present petition is preferred.

During the course of arguments, learned advocate for the petitioner has deposited an amount of Rs.2,000/-in this Court. Previously also, petitioner has deposited an amount of Rs.1,000/-. In all, petitioner has deposited Rs.3,000/-. It appears that the petitioner has already undergone sentence of 350 days and the total sentence awarded by the Court below is 465 days. When the petitioner has deposited Rs.3,000/-, he will be released in near future even if no order will be passed by this Court. As the petitioner has already undergone sentence of about one year and has deposited an amount of Rs.3,000/-, some discretion is required to be shown in favour of the petitioner for releasing him before a period of one and half months because the learned advocate for the petitioner has assured before this Court that he will pursue the petitioner in making the further amount of maintainance for the remaining period of sentence to be undergone by him which may not exceed more than Rs.2,500/-. In view of the above, learned advocates for the respective parties do not insist for reasoned order. Hence, without entering into merits and demerits of the matter, following order is passed.

Order dated 29-10-2001 passed by the learned District Sessions Judge, Ahmedabad (Rural) in Criminal Revision Application No.66 of 2001 and common order dated 31-3-2001 passed by the learned Judicial Magistrate, (First Class), Viramgam in Misc. Cri. Appln. No.221 of

1994 and 265 of 1999 are quashed and set aside. Petitioner is ordered to be released from Central Jail, Sabarmati forthwith if he is not required in any other case. The amount of Rs.3,000/- deposited by the present petitioner-husband in the Registry of this Court is ordered to be paid to the respondent No.2-wife, Jubedaben on proper identification. Respondent No.2 is at liberty to take all possible steps against the petitioner for recovering the arrears amount which if not paid. Petition stands allowed accordingly. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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